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May 12, 2016

Via Federal Express

The Honorable Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Petition of Buccaneers Limited Partnership for Retroactive Waiver
47 CFR § 64/1200(a)(4)(iv)
CG Docket Nos. 02-278 and 05-338 Filed April 28, 2016

Dear Secretary Dortch:

I own a small one-lawyer law firm in St. Petersburg, Florida. I have been practicing law in the Tampa-St. Petersburg community since 1987 (first at a large international law firm, and then later at a mid-size firm), and have had my current office as a sole proprietor since 2003.

When I made the switch from a large firm to a small firm practice, maintaining effective communications with clients, opposing attorneys, and administrative agencies became even more critical to the success of my business. I no longer had an elaborate multi-line phone system or multiple fax machines or a legion of support staff. I had (and have today) a two-line phone and a single fax machine.

A problem which became increasingly troublesome for me from 2003 to 2009 was the proliferation of unsolicited and unwanted advertisements that would come in on my fax machine. I'm sitting at my desk working and I hear the fax machine click on in my outer office. I interrupt what I'm doing, and walk out there because obviously if someone is faxing something to me (instead of sending it by mail) it must be an important communication from a client or an opposing attorney. But it's not. It's an ad from some company I've never heard of selling some product I don't want. And it's printing out on my paper, using my toner, which I have to get in my car and drive out to Office Depot to replace when it runs out. I have a small business and,

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frankly, I resent having to provide paper and toner for ads I don't want, and having to make extra trips to buy supplies to replace them. The time and inconvenience costs me money, and the paper and toner expenses add up over time.

This on its own was annoying enough, but what really upset me was that on several separate occasions, I could not send or receive time-sensitive material as an attorney because my fax machine was spewing out unwanted ads that blocked other transmissions. To give you an example, one of the busy areas of my practice at that time was handling unemployment compensation appeals for individual claimants, through telephone hearings conducted by an appeals referee for the State of Florida Unemployment Compensation Division. All documents used in evidence for those hearings are transmitted by fax to the Unemployment Appeals Clerk and to the opposing party or attorney.

On two occasions I can recall specifically, the unwanted use of my fax machine by third party advertisers delayed a proceeding to my client's detriment. In one case, the Clerk had not transmitted my documents to the Appeals Referee and she asked me to resend them. I could not immediately resend the documents because my fax machine was tied up with a series of incoming ads. The Referee was not able to wait and ended up continuing the hearing to a later date. On the second occasion, I was the one who had not received the voluminous documents that the employer's attorney was trying to enter into evidence. When his office tried to fax them to me, an unsolicited ad came through first and, after several attempts, the Referee again said let's just reconvene on a later date. This was a problem in both cases for my clients – one of whom had to arrange for child care, and the other one who was driving over an hour to my office to appear for the hearing – because it ended up delaying receipt of their unemployment benefits for an additional six weeks due to the delay in having the hearings conducting. It also inconvenienced me and cost me money because I felt it was unfair to charge the client my time for the interrupted and rescheduled hearing.

In the summer of 2009, I began receiving unsolicited faxes from the Tampa Bay Buccaneers trying to sell football tickets and group packages to my office. I do not happen to be a football fan, and my one-lawyer office has no interest in buying one ticket or a group of tickets. On August 17, 2009, as I approached my fax machine to wait for important documents I was expecting from a client, in came another solicitation trying to sell football tickets. I decided this was the last straw, and over the next few days I did some research into my rights under the Telephone Consumer Protection Act. On August 20, 2009, I sent a letter to the registered agent of the Tampa Football Corporation (owner of the Bucs whose tickets were being peddled over my fax machine) and stated the following:

On July 14, 2009, and again on August 17, 2009, Tampa Football Corporation on behalf of the Tampa Bay Buccaneers ("Tampa Bay Buccaneers") sent a facsimile ("the Fax") to my facsimile machine that is connected to the telephone number 727-892-9925, which is registered in my name. A copy of the Fax is enclosed. The Fax is an advertisement attempting to sell me football tickets. Tampa Bay Buccaneers sent the Fax to me without my prior express invitation or permission. Tampa Bay Buccaneers and I have never had an

established business relationship. Frankly, I am tired of receiving unsolicited faxes that use up my ink cartridge, interrupt my day, and delay my receipt of fax communications that *are* invited.

A federal law enacted in 1991, the Telephone Consumer Protection Act ("the Act"), provides as follows:

It shall be unlawful for any person within the United States . . . to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." 47 U.S.C. § 227(b)(1).

The Act also provides that "[a] person or entity may . . . bring in an appropriate court . . . an action . . . to receive \$500 in damages for each such violation." If the court finds that the defendant "willfully or knowingly violated this subsection" of the regulations, the court may triple the damage award. See 47 U.S.C. § 227(b)(3).

By sending the Fax to me, Tampa Bay Buccaneers violated 47 U.S.C. § 227(b)(1) and is now liable to pay damages to me of not less than \$500 for each of the two occurrences under 47 U.S.C. § 227(b)(3). I believe Tampa Bay Buccaneers willfully or knowingly violated the Act (which has been widely publicized), and is therefore liable to pay me \$1,500 for each of the two occurrences – a total of \$3,000.

For information about the Act, see the federal regulations interpreting the Act, and also see the 2001 class action lawsuit, *Nicholson v. Hooters of Augusta, Inc.*, (Richmond County, Georgia, Superior Court case number 95-RCCV-616). In that case, Hooters hired a fax service that sent six unsolicited junk faxes to each of 1,321 fax numbers. In April of 2001, the court ordered Hooters to pay treble damages of \$11,889,000. In another case filed in 2002, Dallas Basketball Limited (the Dallas Mavericks) paid \$650,000 to settle a junk fax class action lawsuit

My letter included a demand that the Tampa Football Corporation pay my office \$500 for each of the two violations, and that they cease and desist sending these junk faxes to me.

My letter resulted in a phone call from Manny Alvere, General Counsel for the Tampa Bay Bucs, who told me that the fax ads had been sent by a company he identified as "FaxQom" and that he was looking into how it had occurred. Later I received a fax from a Steven Simms at FaxQuom denying that his company sent me the fax ads in the first place, but that fax did not even include a mailing address or a physical address or any other contact information except a website which was equally uninformative.

I never received any payment from the Tampa Bay Bucs or FaxQuom in response to my demand, but at least the junk faxes hawking football tickets finally stopped.

I put the matter out of my mind. Since I had taken the time and trouble to do the research under the Telephone Consumer Protection Act and had advised their general counsel of the organization's violations of that law – even citing to them in writing the specific sections and subsections of the law that applied – I assumed that they had ceased their illegal fax advertising activities altogether. It was not until recently when I became aware of the pending litigation that I realized they hadn't stopped at all. **They sent out more blast faxes in 2010!** They simply removed my fax number from their list, and continued the practice of blast-faxing unsolicited advertisements to other small businesses, whom I imagine are every bit as annoyed about it as I am.

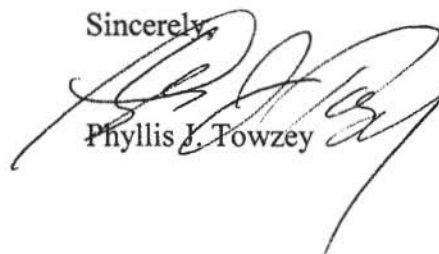
Frankly, you would think that a major league football team would be able to afford to spend the costs of *legal* advertising, instead of taking advantages of small business offices like mine to deluge them with faxed advertising at the recipient's expense. I know I'm certainly not sending unwanted solicitations for my legal services to area businesses via fax or any other means.

Based on all of the foregoing, I wish to register my office's objection to any request by the Tampa Bay Buccaneers seeing a waiver of the requirements that they were supposed to follow in 2009 and 2010 when they were taking advantage of my fax equipment and supplies to print their unwanted advertisements. The Tampa Bay Bucs violated the law and they **knew** they were violating the law **because I sent them a letter in 2009 telling them so, and I spoke with their general counsel and even sent him a second letter by Fed Ex on September 16, 2009.** Simply put, the Tampa Bay Bucs should have followed the law, and in particular should have provided the recipients of their unwanted advertisements the ability to tell them to stop, rather than having to – as I did – perform legal research and locate a registered agent through their corporate records and write multiple letters and have a telephone conversation with their lawyer, just to stop receiving their ads on my fax machine.

I strongly object to the granting of any waiver that retroactively exempts them from the law that all the rest of us operating businesses must follow.

I apologize for taking so much of your time with the length and the vehemence of this letter, but what they are trying to do here just isn't right, and I don't think they should be able to get away with such a blatant disregard of the rules all of us are supposed to follow.

Sincerely,



Phyllis J. Towzey